

MIGRATION IN AFRICA, AN ENDURING PHENOMENON?

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YES TO XENOPHILIA AND NO TO XENOPHOBIA

Everyone knows what Xenophobia is. The words often appear in the headlines of the print and electrical media. Hardly anyone uses the word Xenophilia. The words are derived from the word Xenos in Greek. It means stranger, visitor, or guest. Everyone knows what phobia means. Philia means friendship as used in the word philanthropy.

I would urge the adoption of a new aphorism: "Yes, to Xenophilia and No, to Xenophobia".

In 1941 my father helped seven New Zealand soldiers escape from Nazi occupied Greece. I was taken along despite the protests of my grandparents and mother. My father persuaded them that the Germans would soon recruit teenagers into their factories or even their army,

We arrived in Alexandria and immediately were given refugee permits by the authorities. My father was taken to refugee camp in Cairo where nearly five thousand refugees were housed in an exhibition centre on the banks of the river Nile. I was placed in an orphanage in Alexandria. Two months later I was taken to the Cairo camp to join my father. Refugees with children were to be moved out of Egypt for fear that Egypt may be occupied by General Rommel's North African Campaign. An option was offered: India, then a British Colony or South Africa a Dominion of the British Empire. My father chose South Africa because he had heard that gold and diamonds could be found on the pavements. One hundred and forty of us travelled in style on the Isle de France which was bringing Italian prisoners and to take South African soldiers to North Africa.

From Durban to Johannesburg we travelled by train. We did not stop at the grand main railway station but a small one near it. I later learned that there was a demonstration outside the main station by a small group opposed to South Africa's participation in the war with placards that "Jan Smuts (the then Prime Minister) was bringing the trash of Europe to South Africa", we were later told. Hardly anybody took it seriously.

We were taken to the Department of Internal Affairs office and issued with refugee permits. My father was given a job by Iscor then producing armaments. We were given permanent residence during the early part of 1948 before the apartheid regime was elected to the all-white parliament. Only once was I

accused of eating other people's food by a teacher who apologised when challenged by a fellow pupil who threatened to report him to the headmaster. I was refused South African citizenship twice but granted it in 1972 after the intervention with Prime Minister by a senior Supreme Court judge.

I embraced South Africa's people and the country. Although I became a *persona non grata* to the apartheid regime I was allowed to practice law. I did numerous political trials defending opponents of the regime charged with political crimes and represented families whose relatives died in detention without trial and who died in interrogation rooms as a result of injuries inflicted by security policemen, the leaders of the regime and their security services. I was suspected as a co-conspirator of the leaders of the African National Congress Nelson Mandela, Walter Sisulu, Govan Mbeki, Chief Albert Luthuli, the PAC, the Black Consciousness Movement, the leaders of SWAPO in Namibia and others but was never detained.

I joined the Legal Resources Centre in 1990 after the release of Nelson Mandela from prison. The LRC played an important role from the late 70s in defending individuals and communities. The founder was former Chief Justice of South Africa Arthur Chaskalson. He was inspired by the Litigation Unit of the National Association of the Coloured People in the United States. I have worked in the LRC's Constitutional Litigation Unit since 1990. It has amended its mission statement:

“The Legal Resources Centre’s Vision and Mission:

VISION

Inspired by our history, the Constitution and international human rights standards, the LRC is committed to a fully democratic society based on the principle of substantive equality and to ensure that the principles, rights, and responsibilities enshrined in our national Constitution are respected, promoted, protected and fulfilled.

MISSION

To strive, both for itself and in its work, for a fully democratic society based on the principle of substantive equality and to ensure that the principles, rights, and responsibilities enshrined in our national Constitution are respected, promoted, protected and fulfilled.

To function as an independent, client-based, non-profit public interest law clinic which uses law as an instrument of justice and provides legal services for the vulnerable and marginalised, including the poor, homeless, and landless people and communities of South Africa who suffer discrimination by reason of race, class, gender, disability or by reason of social, economic, and historical circumstances.

To work for a fully democratic society and to build respect for the rule of law and constitutional democracy; enable the vulnerable and marginalised to assert and develop their rights; promote gender and racial equality and oppose all forms of unfair discrimination; and contribute to the development of a human rights jurisprudence and to the social and economic transformation of society.

The LRC seeks creative and effective solutions by using a range of strategies, including impact litigation, law reform, participation in partnerships and development processes, education and networking within South Africa, the African continent and at the international level.”

The LRC relies on the judgments of the Constitutional Court that all within South Africa are entitled to most of the rights contained in the Bill of Rights are available to Refugees and more particularly to protect them from unlawful acts committed against them by anyone including the government, its officials or any other person. Their safety, security, dignity and other personal rights must be

protected. Unfortunately such protection is not available to them. Let us examine how they were often deprived of their fundamental rights.

The LRC has always provided assistance to refugees. In Johannesburg, this work has included monitoring detention conditions of illegal immigrants at holding facilities such as Lindela, applications for refugee status; refugee identity and/or travel documents among many. For example, after the outbreak of xenophobic violence in 2008, the LRC provided legal assistance to asylum seekers and refugees. Assistance given by the LRC focused on the consequences of the xenophobic attacks on asylum seekers and refugees – particularly safety, shelter, nutrition, sanitation and documentation.

I will mention certain specific events that highlighted the precarious situation of foreign nationals living in the inner city and their vulnerability to a range of human rights violations.

In January 2008 before the xenophobic attacks, police raids occurred at the Central Methodist Church (CMC) and the LRC played an active role in providing legal assistance to the refugees who suffered these police raids.

This talk will particularly focus on the work the LRC did on the police raids conducted by the Johannesburg Metropolitan Police Department (JMPD) and the South African Police Service (SAPS) specifically targeted at refugee and asylum

seekers, mainly from Zimbabwe, who had taken refugees CMC located at the inner city of Johannesburg. A brief background to the police raids that took place in 2008 and 2009 police raids is worth giving.

On the night of 30 January 2008, a huge contingent of JMPD and SAPS officers and police vehicles, including passenger cars, police vans and trucks for the transport of people came to the CMC. There were over 1500 people who were sleeping or preparing to sleep inside the church building. About 50 heavily armed police officers forcibly made their way inside the church. On their way in, they broke doors, damaged various property belonging to the church and people who were living inside the church, they hurled derogatory insults at the people living in the church calling them "Amakwerekwere" and dogs and told them that they should go back to their country.

The raid was purportedly authorised under section 13(7) of the South African Police Service Act 68 of 1995, which allows for the cordoning off of a particular area to ensure the safety of the public or to restore public order. A copy document of the authorisation of the raid was produced to the Bishop of the Church at the time, only after the raid was conducted and it specified that it was being conducted in order to search for firearms, ammunition and other criminal items. However no such items were found and about 1300 people were arrested and loaded into police vans. Among them were pregnant women, people living with HIV and who were on medication, the elderly and children.

The people who were arrested were taken to the Johannesburg police station. After a few hours 800 of the 1300 were released without being charged. The remainder were kept in custody and brought to court on charges of being illegally in the country. Many were released when it became clear that they would not be brought before court within 48 hours of their arrest. The remaining detainees were represented by the LRC, other NGO's such as the LHR and the then AIDS Law Project (now SECTION 27) and a variety of private law firms.

The remaining detainees were finally released after the magistrate was reprimanded by Sutherland AJ in the South Gauteng High Court for having abused her powers during the bail applications. Despite the stated purpose of the raid, the only persons arrested during the raid, who were ultimately charged, only faced charges on immigration-related offences. Although immigration officers were present during the raid, they did not participate. Most of those arrested were taken to the police station without being seen by these officers to verify their status.

In 2009 history repeated itself. On the night of 3 July 2009, approximately 350 people who were sleeping in the vicinity of the CMC or happened to be in the area were arrested for "*loitering*" by the JMPD and SAPS. This raid was conducted by a 100-member force and the people affected were those Zimbabwean nationals sleeping in front of the High Court, next to the Church. No

warning of any kind was given to them. Instead they were woken abruptly – many by being kicked. The officials who woke the sleeping persons often did not identify themselves, did not inform those arrested that they were being arrested and did not produce any warrant of arrest.

Those who attempted to put on their shoes and get dressed before going with the arresting officials were stopped and assaulted by the officials for taking their time. Those arrested were told to leave their bags and belongings behind. This is notwithstanding the fact that their bags often contained the essential documents and possessions of those arrested. The officials then threw the bags and belongings into the rubbish. They were harassed, intimidated, and arrested. Some South Africans were also arrested.

The majority was then detained for more than two days, before ultimately being released. Eventually every one of the detainees was released on the morning of Monday 6 July 2009. With the pressure exerted by the LRC and other NGO's such as the LHR, no charges were pursued against them – whether for loitering or otherwise. The LRC then decided to challenge the by-law on Loitering on Public Roads on grounds of constitutional invalidity.

Zimbabweans are not the only refugees in South Africa whose rights are violated. Refugees from Somalia, many of whom have been here for years. Many have been granted asylum or a refugee permit. They are fairly well educated,

competent small business operators particularly in townships predominantly occupied by Africans and in and around informal settlements. Their shops are attacked and goods are stolen by small groups of aggressive residents. On certain occasions police officers in the vicinity take no steps to deter the looters, to arrest them or to prevent further similar activity.

Other refugees from Sub-Saharan States and West Africa are often treated in the same manner.

People do not leave their homes, parts of their families and friends without good reason. It is argued that most of them are economic refugees and do not qualify to be given asylum or a refugee permit.

It may be true that some of them are in fact not entitled to stay, some obtained fraudulent documents, a few may be fugitives from justice in their countries. Some may commit serious crimes within South Africa. They give their compatriots a bad name. The fact that many of them are professional men and women, teachers, doctors, accountants and capable workers is overlooked. Although the official policy of the government calls for fair treatment of all those within our borders xenophobia guides many others not to respect that policy. Furthermore the inefficient manner in which documentation of refugees is administered is pitifully slow and is alleged to be undermined by corruption.

South Africa is not alone. Australia is accused of preventing ships from entering its territorial waters from reaching its coast. European country makes it difficult for victims of violence from North Africa in recent uprisings. The Israelis prevent refugees and their descendants from returning or even visiting the homes of their ancestors.

I want to thank the Royal Norwegian Embassy in South Africa, the United Nations High Commissioner for Refugees, Lawyers for Human Rights and the South African Institute of International Affairs for the opportunity to deliver the Dr Fridhof Nansen Memorial Lecture and all those who have made this gathering possible.

Refugees yearn to return to the place from which they were displaced or fled. Dr Nansen's involvement in 1921 to 1930 as a League of Nations Commissioner of Refugees brings back to mind the Treaty of Lausanne of 1923 in terms of which Greece and Turkey with the encouragement of the international community agreed to force 1.2 million Greek Orthodox Christians to leave their homes in Turkey and 400 000 Muslims to leave their homes in Greece and never allowed to return to their old homes. It has been considered as an acceptable political decision. Many of them then and some even now believe that it may have been good politics but the innermost feelings of the individuals on both sides were ignored. We should be careful not to make a similar mistake. Refugees and their descendants will always remember their homes.